

REMARKS

Claims 1, 3, 10, and 15 are amended, no claims are canceled, and no claims are added; as a result, claims 1-15 are now pending in this application.

No new matter has been added through the amendments to claims 1, 3, 10, and 15. Support for the amendments to claims 1, 3, 10, and 15 may be found throughout the specification, for example but not limited to, the specification on page 6 at lines 9-14.

§102 Rejection of the Claims

Claims 3 and 10

Claims 3 and 10 were rejected under 35 U.S.C. § 102(e) for anticipation by Glover (U.S. 6,052,780).

The subject-matter of independent claims 3 and 10 is novel compared with Glover, because Glover does not disclose a protected contents structure comprising attribute data that comprises information to find, in the protected contents structure, information on an appropriate protocol for establishing a communication interface between the content player and the secure device for use of the secure device to transform secure device data communicated to the secure device through the communication interface into information required to decrypt the encrypted data, as recited in claims 3 and 10.

Instead, Glover discloses that an unwrap procedure may perform authorisation, [...], and may receive any data needed for decryption or decompression, for example keys or passwords.¹ The executed unwrap procedure [...] informs a loaded virtual device driver of the location of hidden information in a file, any keys or other passwords and a name of a phantom directory and file to be called that only the unwrap procedure and the virtual device driver know about.² The unwrap procedure is generally unencrypted executable program code.³ Thus, the unwrap procedure is not equivalent to a secure device to transform secure device data communicated to the secure device into information required to decrypt the encrypted data. The Office Action refers to column 21 of Glover to establish that the disk disclosed therein constitutes a secure

¹ See Glover at column 10, lines 4-7.

² See Glover at column 10, lines 18-24.

³ See Glover at column 9, lines 15-16.

device within the meaning of the presently claimed subject matter. It is noted that the DVD disk is only a recording medium, so that it cannot transform secure device data into information required to decrypt the encrypted data. Thus, the subject-matter of the independent claims 3 and 10 is novel compared with Glover.

For at least the reasons stated above, Glover fails to teach all of the claimed subject matter included in claim 3 and included in claim 10. Therefore, claims 3 and 10 are not anticipated, and are patentable, over Glover. Thus, the 35 U.S.C. § 102 rejection of claims 3 and 10 cannot stand, and Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 3 and 10.

§103 Rejection of the Claims

Claims 1-2 and 15

Claims 1-2 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Glover.

The claimed subject matter as defined in the independent claims 1 and 15 differs from the disclosure of Glover in that Glover does not disclose a protected contents structure comprising attribute data that comprises information to find in the protected contents structure information on an appropriate protocol for establishing a communication interface between the content player and the secure device for use of the secure device to transform secure device data communicated to the secure device through the communication interface into information required to decrypt the encrypted data. The effect of this difference is that the system according to the claims 1 and 15 permits any one of a number of possible secure devices to be used as access token, for continually authorising access to the encrypted data,⁴ whereas and in contrast the system of Glover uses a single input of a numeric identifier by the user.⁵

The claimed subject matter included in independent claims 1 and 15 provides a clear advantage over Glover in that the secure device in claims 1 and 15 represents a more secure way of selectively granting access to encrypted contents, and in that the claimed subject matter of

⁴ See for example the specification of the present application on page 1 at lines 9-22.

⁵ See Glover at column 21, lines 26-27.

claims 1 and 15 allows the access mechanism to be adapted whilst maintaining interoperability with existing technology. In contrast, the provision of only a password or numerical identifier provides only one initial check of the entitlement to access the encrypted contents, after which the owner of the decryption device has continuous access.

For at least the reasons stated above, Glover fails to disclose or suggest all of the claimed subject matter included in claim 1 and all of the claimed subject matter included in claim 15. Further, the claimed subject matter included in claims 1 and 15 is not obvious in view of the disclosure in Glover. Thus, the 35 U.S.C. § 103(a) rejection of claims 1 and 15 cannot stand.

In addition, claim 2 depends from claim 1, and therefore includes all of the claimed subject matter as recited in claim 1. For at least the reasons stated above with respect to claim 1, claim 2 is not obvious in view of Glover, and so the 35 U.S.C. § 103(a) rejection of claim 2 also cannot stand.

Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1-2 and 15.

Claims 4-9 and 11-14

Claims 4-9 and 11-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Glover in view of Shear et al. (U.S. 6,157,721).

Claims 4-9 and 11-14 are not obvious in view of the proposed combination of Glover and Shear et al. because the proposed combination of Glover and Shear et al. fails to disclose or suggest all of the claimed subject matter included in claims 4-9 and in claims 11-14.

Claims 4-9 depend from claim 3, and therefore include all of the claimed subject matter as recited in claim 3. Claims 11-14 depend from claim 10, and therefore include all of the claimed subject matter recited in claim 10. Applicant has established that Glover fails to disclose or suggest the claimed subject matter of claim 3 and claim 10, and thus fails to disclose or suggest the claimed subject matter of claims 4-9 and claims 11-14.

The additional disclosure in Shear et al. fails to remedy the deficiency of Glover. The subject-matter of independent claims 3 and 10 is not obvious when compared with Shear et al. because Shear et al. does not disclose the use of a secure device to transform secure device data

communicated to the secure device through the communication interface into information required to decrypt the encrypted data. Shear et al. does not even disclose encrypted data containing information on a protocol for communication between the content player and a secure device. Instead, Shear et al. discloses a method of distinguishing between trusted and untrusted executables comprising [...] determining whether the executable has an associated digital signature and authenticating any digital signature using at least one public key secured behind a tamper resistant barrier and therefore hidden from the user.⁶

Even if the skilled person were to turn to Shear et al. when seeking to modify the system known from Glover, he would find no disclosure of information on an appropriate protocol for establishing a communication interface between the content player and the secure to transform secure device data communicated to the secure device through the communication interface into information required to decrypt the encrypted data.

Thus, the proposed combination of Glover and Shear et al. fails to disclose or suggest all of the claimed subject matter included in claims 4-9 and included in claims 11-14, and so claims 4-9 and 11-14 are not obvious, and are patentable, over the proposed combination of Glover and Shear et al.

Claims 4-9 and 11-14 are not obvious in view of the proposed combination of Glover and Shear et al. because one of ordinary skill in the art would not be motivated to form the proposed combination of Glover and Shear et al.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). To do that, the Examiner must show that some objective teaching in the prior art or some knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references. *Id.*

The *Fine* court stated that:

Obviousness is tested by "what the combined teaching of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 878 (CCPA 1981)). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent

⁶ See Shear et al. at column 24, lines 10-19.

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Title: SYSTEM FOR PROVIDING ENCRYPTED DATA, SYSTEM FOR DECRYPTING ENCRYPTED DATA AND METHOD FOR PROVIDING A COMMUNICATION INTERFACE IN SUCH A DECRYPTING SYSTEM

some teaching or suggestion supporting the combination." *ACS Hosp. Sys.*, 732 F.2d at 1577, 221 USPQ at 933. And "teachings of references can be combined *only* if there is some suggestion or incentive to do so." *Id.* (emphasis in original).

The skilled person seeking to modify the system known from Glover would not turn to Shear et al., since Shear et al. is directed to solving a different problem. Shear et al. describes a system for protecting a computer processing environment against potentially harmful computer executables.⁷ Moreover, there is no suggestion or motivation to combine the disclosure of Glover with that of Shear et al. Glover describes a mechanism which allows a content provider to encrypt digital information without requiring either a hardware or platform manufacturer to provide support for the specific form of corresponding encryption.⁸ On the other hand, Shear et al. describes a combination of encryption and an assurance level scheme to ensure that load modules or other executables can be executed only in specific environments or types of environments.⁹ Thus, Glover and Shear et al. disclose contradictory aims, and thus one of ordinary skill in the art would not have suggestion or incentive to combine Glover and Shear et al.

Because the proposed combination of Glover and Shear et al. fails to disclose or suggest each of the elements included in claims 4-9 and in claims 11-14, and because there is no incentive to form the proposed combination of Glover and Shear et al., the 35 U.S.C. § 103(a) rejection of claims 4-9 and 11-14 cannot stand.

For at least the reasons stated above, Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 4-9 and 11-14.

Reservation of Rights

Applicant does not admit that references cited under 35 U.S.C. §§ 102(a), 102(e), 103/102(a), or 103/102(e) are prior art, and reserves the right to swear behind them at a later date. Arguments presented to distinguish such references should not be construed as admissions that the references are prior art.

⁷ See Shear et al. at column 1, lines 23-24.

⁸ See Glover at column 3, lines 37-42.

⁹ See Shear et al. at column 6, lines 63-65.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 408-278-4042 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

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